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HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 17

UNITED GAS PIPE LINE COMPANY,
Petitioner,

v.

MOBILE GAS SERVICE CORPORATION
AND FEDERAL POWER COMMISSION,
Respondents.

APPENDIX TO PETITIONER'S BRIEF

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

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Excerpts from Natural Gas Act

[PUBLIC — No. 688 — 75TH CONGRESS]
[CHAPTER 556 — 3D SESSION]
[H. R. 6586]

AN ACT

To regulate the transportation and sale of natural gas in interstate commerce, and for other purposes.

NECESSITY FOR REGULATION OF NATURAL-GAS COMPANIES

SECTION 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution

83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas. [52 Stat. 821 (1938); 15 U. S. C. § 717 (1946).]

* * * * *

RATES AND CHARGES; SCHEDULES; SUSPENSIONS OF NEW RATES

SEC. 4. (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue

preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation, or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulations, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of

any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge

is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible. [52 Stat. 822 (1938); 15 U. S. C. 717c (1946)]

* * * * *

FIXING RATES AND CHARGES; DETERMINATION OF COST OF PRODUCTION OR TRANSPORTATION

SEC. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however, That* the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

* * * * *

REHEARING; COURT REVIEW OF ORDERS

SEC. 19 (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.

(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in

part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

* * * * *

GENERAL PENALTIES

SEC. 21. (a) Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this act required to be done, or willfully and knowingly causes or suffers such omission or failure, shall,

upon conviction thereof, be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both.

(b) Any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this act, shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine of not exceeding $500 for each and every day during which such offense occurs. [52 Stat. 833 (1938); 15 U. S. C. 717t (1946)]

* * * * *

Excerpts from The Federal Power Act

49 Stat. 852, 16 U. S. C. 824e, Provides in part:

SECTION 206:

(a) Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

Opinion of Trial Court

In

UNION DRY GOODS COMPANY, v. GEORGIA PUBLIC SERVICE CORP.	No. 9, July Term, 1914. Bibb Superior Court. Injunction.

Judgment and Opinion of Court

The plaintiff seeks to prevent the defendant, a public service corporation, from refusing to furnish electric current, as it has been doing under a contract executed on July 18th, 1912, and from treating this contract as abrogated, alleging that the defendant is demanding increased rates for its service and is threatening to cut off its current and refuse its electric service to plaintiff to its irreparable damage, unless plaintiff will pay rates in excess of the rates agreed to in the said contract.

The defendant in answer to the plaintiff's petition admits the original contract and admits that it is now demanding increased rates, though the time for which said contract was made has not expired, but defends its rights to make demand for increased rates by setting up an order and judgment of the Georgia Railroad Commission that the contract in question, and all similar contracts made by the defendant, be abrogated, and fixing maximum rates by which defendant shall be governed in its charges to the public.

Upon the hearing the order and judgment of the Railroad Commission were put in evidence and it was admitted and proved that the rates complained of in this case were not in excess of the maximum rates fixed in its order by the Railroad Commission to be charged by the defendant corporation for electric current furnished to its consumers.

The plaintiff concedes that if the Railroad Commission has power and authority to fix rates at which electricity

may be furnished by Companies and Corporations engaged in manufacturing and transmitting this useful agency, and to adjudicate contracts already made to be discriminatory, and to order them abrogated, though thereby the consumer will be injured and the electric company benefited, then the defendant has the right and power, under the orders of the Commission passed in this case, to treat the contract of July, 1912, as abrogated, as of March 1st, 1914. In other words, the plaintiff concedes that unless the order of the Railroad Commission be treated by the Court as void and of no effect, in so far as it orders this contract, and all others similar thereto to be abrogated, it is impossible for this court grant the prayers of the petition.

The petition, therefore, attacks the act of 1907 by which the General Assembly undertook to extend the powers of the Railroad Commission so as to take in the control of electric light and power companies, telegraph and telephone companies, street railroad companies, and other public service companies enumerated in said act. It denies the constitutionality of this act. It also denies that the act, can if constitutional, confer upon the commission the right to regulate rates, and prevent discriminating rates. It also specially denies the power of the Commission to abrogate a contract already legally made, between a Light and Power Company and a consumer, alleging that such power impairs the obligation of a contract, and virtually is an ex-post facto law as to contracts.

Upon careful consideration of the contract in question the order of the Railroad Commission, in Re, "Application of Georgia Public Service Corporation for increase in commercial and residence and retail power rates"; — and of the adjudication of the Supreme Court as to the jurisdiction and power of the Railroad Commission; after full and able argument by counsel, for both the plaintiff and the defendant, — I do not think that there is any doubt as to the power of the Commission to fix and regulate rates for the

Georgia Public Service Corporation, and to require these rates to be uniform. The most serious question was whether a legal contract could be set aside even by the Commission, with all its broad powers. This question, however, is resolved by the principle repeatedly adjudicated, that such a contract was made, subject to the law, then in existence, giving the Commission penary power to fix rates and to prevent discrimination, — this having been specially conferred upon the Commission long prior to the contract of July, 1912; and that both parties contracted subject to the public law conferring this absolute power upon the Commission.

Recent decisions of the Supreme Court of this State, as well as the uniform trend of judicial opinions in construing statutes creating Railroad and Public Service Commissions, seem to leave no doubt as to the power of the Commission, at the instance of the consumer, or of the Power Company, or of its own initiative, to fix and regulate rates, and no doubt is left that not only is the Power Company bound by the rulings of the Commission as to maximum rates, but also as to discriminatory rates, and, of course, the consumer of light or power current must yield to the same authority when it condemns any contract, either in contemplation, or in actual existence, as discriminatory, and so against public policy.

It is therefore considered and adjudged that the injunction prayed for be denied and the restraining order be dissolved. This April 20, 1914.

H. A. Matthews, J.S.C.M.C.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office,

Atlanta, July 11, 1955.

I hereby certify that the foregoing three (3) pages hereto attached contain a true and complete copy of the Judgment and Opinion of the trial court, in Supreme Court Case No. 11535, *Union Dry Goods Company* v. *Georgia Public Service Corporation*, as appears from the record of file in this case in this court.

WITNESS my signature and the seal of this court hereto affixed the day and year above written.

/s/ HENRY H. COBB
Deputy Clerk
Supreme Court of Georgia.

[SEAL]

OPINION OF
RAILROAD COMMISSION OF GEORGIA

(Now known as Georgia Public Service Commission)

FILE NO. 10978

By Candler, Chairman:

In Re

Application of Macon Railway and Light Company, Macon, Ga.
For increase in commercial and residence light and in retail power rates.

Under an ordinance of the city of Macon, passed in 1902, the Macon Railway and Light Company, as a result of a consolidation or merging of the Macon Consolidated Street Railway Company; the Macon Electric Light and Railway Company, and the Metropolitan Street Railway Company, became possessed of franchise rights to operate street railway lines, and electric lighting and power lines in that city. Among other things this franchise provided that at no time during its existence, should a fare exceeding five cents for a continuous ride within four miles from the city hall, be charged by said company, and also that beginning January 1st, 1914, and for ten years thereafter, a tax of one per centum "of the gross receipts of the earnings of said company from any and all sources" should be paid to the city, which said tax should be in lieu of all license, occupation or special taxes, but not of ad valorem taxes, or paving or similar assessments.

Under this franchise the railway and light company undertook to furnish to the public transportation on its car lines, and electric current for lighting and power purposes.

Prior to March 1st, 1913, the rate in effect for commercial and residence lighting was 12 cents per K. W. H., with discounts for payment of bills by the 10th of the succeeding month ranging from ten to sixty per cent. according to the monthly consumption, with a minimum charge of $1.50 per month for each meter connected. The rate for power was 10 cents per K. W. H., with the same discounts as given on commercial and residence lighting, plus a service charge varying from eighty cents to one dollar per month per H. P.

Anticipating severe competition for business upon the completion of a steam plant by the Georgia Public Service Corporation about March 1st, 1913, effective March 1st, 1913, the railway and light company put into effect for commercial lighting and power a rate of 10 cents per K. W. H. with discounts according to monthly consumption and for prompt payment, ranging from sixty to eighty per cent., with a minimum charge of $1.00 per month, and for residence lighting the same rate with discounts ranging from thirty to forty per cent. and a minimum charge of fifty cents per month. Under these rates commercial lighting and power current was furnished at from 4.05 cents net down to 2.02 cents net per K. W. H., and residence lighting current for from 6.75 cents down to 5.85 cents net per K. W. H.

Alleging that the last named scale of rates, now in effect, is non-compensatory and ruinously low, the company petitions the Commission for authority to increase its commercial and residence lighting and its power rates, to the following:

Commercial and Residence Lighting.

(Gross, subject to discount of 10 per cent. for payment within 10 days after due date).

			Gross	Net
First	50	K. W. H. or less per month....	11.1¢	10¢
Next	50	" " "	10	9
Next	100	" " "	9	8.1
Next	100	" " "	8	7.2
Next	100	" " "	7	6.3
Next	100	" " "	6	5.4
Next	1500	" " "	5	4.5
Next	1500	" " "	4	3.6
Next	2500	" " "	3	2.7
Next	4000	" " "	2.5	2.25

Minimum monthly charge $1.00 net per meter installed.

Retail Power Service.

			Gross	Net
First	50	K. W. H., or less, per month	6¢	5.4¢
Next	50	" " "	5	4.5
Next	300	" " "	4	3.6
Next	600	" " "	3	2.7
Next	1500	" " "	2.5	2.25
Next	2500	" " "	2	1.8
All over	5000	" " "	1.8	1.62

Minimum monthly charge $1.00 per K. W. of maximum demand based on 60 per cent. of K. W. connected load, but in no case less than $1.00 per month for each meter installed.

Between March 1st, 1913, when the reduced rates became effective and October, 1913, during the active competition for business between the petitioner and the Georgia Public

Service Corporation, each entered into contracts with numerous commercial light and power consumers covering long periods of time, some as long as five years.

The Mayor and Council of the city of Macon, several consumers holding contracts covering long periods and numerous citizens have entered appearances and oppose the grant of the increased scale of rates prayed for.

Petitioner and protestants have been fully heard by the Commission.

In order that a clear understanding of the contentions of the respective parties and the rulings of the Commission thereon may be obtained, brief reference should be made to conditions in Macon with regard to public lighting, power and transportation as they are to-day, and of the events productive of these conditions.

The Macon Railway and Light Company was incorporated in October, 1902, and as already stated, was a consolidation of all the electric railway, electric lighting and power companies operating in Macon and its suburbs. Under the franchise ordinance first mentioned the consolidation was expressly approved by the city. The franchise was accepted and the petitioner has since been continuously operating thereunder. It owned and now owns a centrally located steam power station, with a generating capacity of 3000 electrical horse power, sufficient to supply the present needs of the city. The company was originally capitalized with $900,000.00 of common stock, $300,000.00 of preferred stock and $1,000,000.00 of mortgage bonds. It is in the record, undisputed, that the original properties of the company were purchased from the proceeds of the bonds; that the proceeds from preferred stock were expended in subsequent improvements, betterments and additions, and that the $900,000.00 of common stock does not represent any actual capital contributed. The capitalization stands to-day as originally issued. Since its organization the company has earned and paid yearly its fixed

charges, and six per cent. on its preferred stock; and in 1910 and 1911, four and one-half per cent., and in 1912, seven per cent. on its common stock, besides accumulating a surplus of about $450,000.00, in the 10 years ending with 1912.

Some six or seven years since, W. J. Massee and A. B. Leach and Company purchased the control of the company, and W. J. Massee became its president, continuing so for about five years.

The Macon Gas Company was organized in 1852 and controls the entire gas industry in Macon. Its controlling stock was acquired some years ago, and is now controlled by A. B. Leach & Co.

In 1906 the Central Georgia Power Company was organized by W. J. Massee and subsequently A. B. Leach & Co. acquired and now control the stock of this company. It runs and operates a hydro-electric power on the Ocmulgee River, near Jackson, Ga., with an installed hydraulic and electrical equipment with a generating capacity of 16,000 E. H. P. In 1910 W. J. Massee was its president, as he was of the Macon Railway and Light Company.

On February 3rd, 1910, a contract was entered into between the Central Georgia Power Company and the Macon Railway and Light Company, both controlled by A. B. Leach & Co. (the contract being signed by W. J. Massee, as president of each) under which the Power Company agreed to sell to the Railway and Light Company electric current, delivered at Macon, for approximately the equivalent of one cent per K. W. H. The Railway and Light Company obligated itself, during the life of this contract, 20 years, to purchase current from no other source; it was also obligated to keep, maintain and operate its steam plant, as an auxiliary, for generating and supplying current when the Power Company's current failed, the Power Company to pay the actual operating expenses and ordinary repairs. The Railway and Light Company further ob-

ligated itself to sell current for power only in amounts of less than 50 H. P. in Bibb county, and not to sell in any quantity outside of Bibb county. This 1910 contract was substituted for a contract between the same parties made in 1908, before the Power Company's plant was completed.

Subsequent to the acquisition by the Massee and Leach interests of all the above mentioned properties, A. B. Leach & Company formed a holding association under the laws of Massachusetts, to acquire the securities of the Central Georgia Power Company, the Macon Railway and Light Company, the Macon Gas Company, and the Central Georgia Transmission Company, this being a company organized to take the current of the Central Georgia Power Company, at its plant, and transmit and deliver it to customers in different cities.

The holding association is known as the "Georgia Light, Power and Railways" and controls securities of all the above mentioned companies, and in addition, we conclude practically controls the Georgia Public Service Corporation. So that it controls, without competition, the entire electric railway, electric light, electric power and gas business of the city of Macon and its suburbs.

In 1912, W. J. Massee severed his connection with all of the Leach properties, and shortly afterwards organized the Georgia Public Service Corporation and commenced the erection of a steam plant for generating electric current for lighting and power, his plant having two units, one of 1500 and the other of 500 K. W. capacity. This plant was completed and commenced business as an active and aggressive competitor of the Railway and Light Company in March, 1913, the reduced lighting and power rates by the Railway and Light Company effective March 1st, 1913, and still in effect being made to meet the situation as viewed by the old company.

The usual results followed and after six months of throat cutting, in October last, the Leach interests controlling

the Railway and Light Company purchased the stock of its competitor, the fight for business ceased, and simultaneously separate applications by the Railway and Light Company, and by the Public Service Corporation, were filed with the Commission for the approval of the scale of rates hereinbefore set forth.

Two Public Utilities in Same Business in Same City.

Under normal conditions these applications by separate companies should be considered separately by this Commission, and as required by law this Commission would prescribe just and reasonable rates for each company. In doing so, under the conditions existing in Macon, the Commission finds itself much restricted and hindered.

The courts have long since settled the question as to what constitutes a just and reasonable rate; to be such, it must afford a fair return upon the fair value of the property at the time devoted to the public use, provided it be not more than the service rendered to the public is reasonably worth. It is manifestly impossible for the two companies as distinct, separate and independent entities, to continue in the same business in the same territory upon different scales of rates. The one with the lower rate and equal service, as a real competitor and not restrained by common ownership, would soon have all the business, or certainly all it could serve.

This Commission is not a judicial body, and in a rate question, certainly, is without power to pass upon the legality of the consolidation of competing light companies in Macon, the subsequent acquisition by the consolidated interests of the Gas Company and the Public Service Corporation, or of the restrictive or restraining features in the contract between the Central Georgia Power Company and the Macon Railway and Light Company. Such questions are for the courts.

Certainly as the result of competition between the Public Service Corporation and the Railway and Light Company, the users of electric current in Macon enjoyed low prices for a season, but the inevitable result followed.

We do not believe that a business which supplies to a community, a public utility like gas or electricity, is one in which full and free competition between two companies engaged therein, can be expected to permanently prevail. Experience has demonstrated the world over, as it has in Macon, that when there is more than one such company in a city engaged in the same business, while active competition may prevail for a while, sooner or later, the competing companies find it to their interest to reach an understanding as to prices, or to a division of territory, or both, and in the great majority of cases the two companies either become one or the control of both passes into the same hands.

Our public policy in Georgia has been to encourage competition as a provider of good service and a regulator of prices, and yet at the same time we have adopted the policy of governmental regulation as necessary to secure these ends, and to prevent unlawful discriminations, which always find their best breeding places in unrestrained competition.

We do not believe competition can ever be a consistent and proper regulator of rates and other conditions in the public utility field. Real competition in such a field means duplication of plants, which when once built, are generally useless for other purposes.

In 1912 there was in Macon an established light and power company, with plant and capacity sufficiently large or capable of enlargement, to serve the city for many years. Instead of coming to this Commission for fair and reasonable rates or for improvement in service, if unsatisfactory; instead of taking steps to compel this established company to furnish all proper and reasonable service at fair rates, the city adopted the policy of granting franchises to another

company to come in and share the business, or to compete for it. This company, before it could serve the public, had to provide itself with an expensive plant and equipment, as well as with business and operating organizations. The result is that real competition is now gone, and there is invested in these duplicate plants and organizations; in this city, much more property, much more labor, supplies and services for supplying electric light and power than is needed or would have been made with only one company, upon which, under the law, so long as bona fide devoted to public uses, the public must pay returns.

As already intimated it is not improbable that since both are now controlled by the same interests, one will gradually be dismantled, much of its property wasted and permitted to decay, and in some way and in the end, the public will have paid for it.

The Commission earnestly believes that it would be wise if the Legislature would prohibit the building of duplicate public utilities, or the grant of franchises to such, prior to application to and issuance by this Commission of certificates of public convenience and necessity. In our opinion, the government which properly assumes to prescribe reasonable rates and compel adequate services by public utilities, should also protect such utilities and the public from unwise or useless competition and the wasteful investment of money in unnecessary plants.

Under all the conditions of common ownership attached to these properties, the Commission has reached the conclusion, in the interest of the public, that it should deal with the substantials, and not with theories, and that it should prescribe just and reasonable rates for the older and larger company; the one our inspection demonstrates has the better constructed and better equipped plant; the one incorporated with the electric street railway system, bringing about economical co-operation; the one with the larger and wider distribution system; and altogether the

one capable and able, or capable of being more economically enlarged, to efficiently serve the entire community.

In doing this, we are assuming, and logically so, that with common ownership and joint management as the evidence in this case shows already exist, and real competition already discontinued, the railway and light company will very soon have all the business, or so much thereof as it is able to carry with its present equipment.

In a separate order we shall prescribe the same rates for the Georgia Public Service Corporation. The plant of this company is not so large, expensive, or permanently constructed as the Railway and Light Company's properties, and in our opinion these rates, under normal conditions, will afford it fair returns upon the fair value of its property devoted to the public use.

In this treatment of these cases, from a rate standpoint, the Commission in no way commits itself upon the legality of the combination or ownership in common of the lighting properties involved. We are simply dealing with confronting conditions, not theories.

Segregation of Properties Devoted to Different Uses.

In support of its application for increased rates for commercial and residence lighting and for power, the applicant insisted that in ascertaining whether the present scale of lighting and power rates was sufficient to provide it with a fair return upon the fair value of its property, the Commission should consider its investments and its business, as a whole, contending that if its revenues from all sources, including transportation, lighting and power, were insufficient to give it fair returns, its lighting and power rates should be increased, *because* under its franchise from the city, it had accepted the burden of supplying all three services concurrently, with the proviso that the railway transportation charges should at no time or under any

circumstances exceed the rate now in effect, to-wit, five cents for a continuous ride within a four mile radius of the city hall, and universal transfers. The company, therefore, insists that as there can be no increase in transportation charges, even though they should be inadequate, any increase of revenue necessary for a fair return on the entire property, must come from increased lighting and power rates.

The Commission can not adopt this view. The Railway and Light Company is rendering two distinct services, transportation and lighting. While some of the properties necessary in furnishing these facilities are used in common, very much the larger percentage of its property as to the two services, is distinct.

The Commission cannot see either the legality or justice of compelling light customers of the company to share in any losses it may incur in transporting its railway patrons. Losses, if any, from inadequate railway fares cannot be compensated by extortionate lighting rates. The fact that under the franchise grant by the city, the company contracted, under the one grant to render the two services and accepted a maximum rate for one, need not be considered by this Commission in the pending application.

The properties used by the company must be segregated; the value of the property used for lighting and power purposes ascertained and lighting and power rates based thereon. In ascertaining the values hereinafter stated, property used in common has been prorated according to uses made of it by each service. This practice has been heretofore followed by the Commission in similar cases, and will not be departed from in this instance.

Franchise Values.

The applicant contends that to its physical property values should be added, for rate making purposes, the value of its franchises granted by the city. Following its own precedent the Commission, will not, for rate making pur-

poses, include the value of franchises *donated* by the public, in the value of property upon which fair returns should be had. The franchise under discussion is the right to occupy and use the streets of Macon as rights of way, etc. These streets belong to the public. The right to use them, as granted, is a valuable right, and hence the franchise is taxed as a property right. But this valuable property right in the public streets was *donated* by the public.

Every dollar of expense attached to its use, including taxes, is repaid by the public to the company, in the rates which have been and will be allowed. The public should not be required, in addition to pay a return to the company upon the value of property donated, in order that it might be used to serve the public.

Going Value.

The applicant further contends that a large sum, to-wit, from 25 to 30 per cent. of the total values of the physical properties used in the public service, should be added to the physical property values, as "going concern value" or "going value." The question of "going value" has been much discussed, by courts and Commissions, during the past few years. It arises in three distinct classes of cases, to-wit, capitalization issues, in rate applications and in sale or purchase transactions. The principles applying in one class have sometimes been applied to the others. In our opinion, there are important distinctions, particularly between capitalization and purchase or sale cases, and rate making cases.

It is well to have clearly defined just what is meant by "going value" or "going concern value." As we understand the term, it means a value due to the fact that a plant has consumers actually using its product; that it is in actual and successful operation, and has attached to it a developed business. As we understand, the claim in this case is, that to actual physical values there should be added a sum

representing the value of this business and the expense incurred in attaching it.

In a *rate* consideration we distinguish between the value of the attached business, as a property addition, and the actual cash outlay made in attaching the business. The Commission will not allow as added property upon which returns should be perpetually paid by the public, the value of the established business. We do not mean to say that we have in reaching conclusions as to values herginafter stated, treated certain physical properties as individual, disconnected units. We have considered them as integral and essential parts of a completed, perfected plant, capable of and ready to serve. In these values we have included overhead charges, such as organization, engineering, contractors' profits, reasonable promotion expenses, legal expenses, interest during construction, insurance, etc. In so far as "going value" includes such elements as actual expense of attaching business, we believe that it should be recognized in the earlier or beginning rates of a public service corporation and for a sufficient period to reimburse the company for such reasonable expenditures. This is done when such expenses are carried, as they should be and are, in operating expenses. But to allow them in "operating expenses" and at the same time add fixed values to physical property values and tax the public perpetually to afford a return thereon, is contrary to our convictions of right.

In the application under consideration, it should be borne in mind that the Railway and Light Company is a consolidation only ten years since of established corporations. The present company was not a pioneer; it succeeded going concerns. The record shows that if it during its brief existence of ten years incurred any expenses in attaching business, it has repaid itself fully in its earlier rates of fifteen cents per K. W. H. down to twelve cents per K. W. H. prevailing at the time competition reduced them on March 1st, 1913. That its earlier rates repaid it for all such expenses is

clearly shown when it is noted that since its organization the company has paid from earnings annual interest on its bonds, six per cent. on its preferred stock, and in 1910 and 1911 four and one-half per cent. on its common stock and in 1912, seven per cent., and in addition accumulated $450,000.00 of surplus earnings.

We have given thorough consideration to this question, so earnestly pressed by counsel for applicant, but are firmly of the conviction that "going value" should not be included in a valuation of a public utility for rate making purposes, and in so holding are following the large preponderance of court and Commission precedents.

Excluding "franchises" and "going value" the Commission has attempted to ascertain from the record the fair value of the lighting and power property of the Railway and Light Company, as it stands to-day, used or useful in supplying the public in Macon with electric current for lighting and power purposes. We have not had an independent appraisal made, because after careful examination and checking of the inventories, appraisals and estimates submitted by the company's engineer, Mr. L. A. McGraw, we did not deem the expense necessary. We have also compared Mr. McGraw's estimates with data already in the possession of the Commission, and are satisfied that the unit prices and costs used by Mr. McGraw are approximately correct, and that therefrom, and from general information and data already in its possession, the Commission, after excluding certain items, in our opinion improperly included in Mr. McGraw's inventories and estimates, has been able to ascertain the fair value of the property used and useful for lighting and power purposes, as it stands at this time.

Valuation Physical Properties of Macon Railway and Light Company Used in Commercial and Residence Lighting and Power.

	Reproduction New	Depreciated
Steam Plants:		
Real estate and buildings	$ 69,140.00	$ 69,140.00
Coal trestle and storage	690.00	620.00
Machinery and equipment of all kinds	278,176.00	236,450.00
Total steam plant and equipment	$348,006.00	$306,210.00
Less proportion assigned to railway department on basis of percentage of total current used by it in 1912, to-wit, 49.7 per cent, 1913 not used because of special conditions existing in that year	172,958.00	152,186.00
Prorata total valuation steam plant assigned to light and power department on basis percentage of current used, 50.3 per cent.	175,048.00	154,024.00
Sub Station and Equipment:		
Sub station and installed equipment used by light and power department, excluding street lighting equipment and pro rata of real estate and buildings	28,970.00	27,623.00
Distribution:		
Overhead lines and distribution, excluding lines and distribu-		

	Reproduction New	Depreciated
MISCELLANEOUS:		
Including stable equipment, tools, furniture and fixtures	9,506.00	7,996.00
Add working capital, including stores necessary to carry	25,000.00	25,000.00
Total physical properties used and useful in commercial and residence lighting and power	$550,521.00	$464,241.00

VALUATION PHYSICAL PROPERTY USED IN STREET LIGHTING.

	Reproduction New	Depreciated
SUB STATION EQUIPMENT:		
Arc lamps, rectifiers, transformers, protective apparatus, switch board, wiring, etc.	$ 44,160.00	$ 39,744.00
Laboratories, arc and meter departments	2,070.00	1,863.00
Overhead lines, arc circuits, lamps, etc.	49,207.00	39,366.00
Total valuation physical properties used and useful in street lighting	$ 95,437.00	$ 80,973.00

If the valuation of property used in street lighting, as given above, is added to the valuation of property used in commercial and residence lighting and power, we have as the total valuation of all property used for lighting and power, including working capital:

Commercial and residence and power	$550,521.00	$464,241.00
Street lighting	95,437.00	80,973.00
	$645,958.00	$545,214.00

We are of the opinion that in prescribing rates for commerical and residence lighting and for power rates, under the conditions developed in this case, it is necessary to *exclude* from valuations of property used and useful in its lighting department, such property as is needed for and exclusively used in supplying and distributing current for municipal lighting, as also all revenue and operating expenses from income and expense accounts, for the following reasons:

MUNICIPAL LIGHTING AND PROPERTIES.

It appears from the record that the municipal lighting since July 1st, 1913, has been done at prices which it is alleged are below cost. Arc lights, for example, are furnished at $21.95 each per annum. Taking current from the Power Company at its contract price, it would cost the Railway and Light Company about $23.55 per lamp, to perform this service, exclusive of taxes, interest and depreciation. Municipal lighting, however, is performed under a contract between the Central Georgia Power Company and the city of Macon. The entire street lighting system, including every line and all equipment, valued by us as above stated, is owned and maintained by the Macon Railway and Light Company, which to July 1st, 1913 did the municipal street lighting. It appears that the Power Company renders its monthly bills to the city for municipal lighting nominally done by it under its contract, collects the same, and turns the money over to the Railway and Light Company, which last company credits it to its income account.

The current necessary for street lighting is furnished by the Power Company to the Railway and Light Company and charged at the contract rates mentioned earlier in this opinion. The Railway and Light Company, it appears, furnishes to the Power Company equipment valued by us at $80,973.00, properly maintains the same, stands the heavy

depreciation therein, pays all taxes and every other charge thereon, solely to enable the Power Company to perform its contract obligations to the city. In addition the Railway and Light Company allows the Power Company to charge to its account every kilo-watt of current used to carry out the Power Company's contract for street lighting, and receives as compensation for the use of its street lighting equipment, operating expenses, maintenance, depreciation, taxes, fixed charges, and the supplying of electric current, the prices per arc and lamp named in the Power Company's contract with the city. Every cent of loss involved in doing the municipal lighting in Macon under a contract with the Power Company, is borne by the Railway and Light Company, so far as the record shows.

If the contract to perform the street municipal lighting for the public, at a loss, was with the Railway and Light Company, there might be urged some ground for allowing the company to recoup losses thus incurred in serving the public, out of the other lighting rates to the public. But here is a contract, in which the Railway and Light Company, in so far as the record shows, had neither part nor lot, and yet it has apparently undertaken to carry out its obligations, at an actual loss.

For these reasons we think it proper to exclude from our valuation, so much of the lighting property of the Railway and Light Company, as is devoted, not to the public's use, but to the use of the Central Georgia Power Company in the fulfillment of its contract with the city, and permit the Railway and Light Company to look to the Power Company for a fair return thereon.

We shall also exclude from the Railway and Light Company's income account the amounts due the Power Company by the city for street lighting under contract to be performed by the Power Company. In so far as possible, we shall also exclude from operating expenses of the Railway and Light Company, all expenses incurred by it in performing services for the Power Company.

So excluded, in our opinion, a fair valuation of the property, used and useful, in commercial and residence lighting and in supplying electric current for retail power purposes, at this time, including necessary working capital, is $464,241.00.

Auxiliary Steam Plant.

We have, as will be noted included in this valuation, 50.3 per cent. of the appraised value of the steam plant, owned by the company, and since current has been purchased from the Power Company only used as an auxiliary steam plant. This allocation of value is based upon the percentage of total current used by the Railway and Light Company in its lighting and power service, the remaining value 49.7 per cent being assigned to the railway department. Properly allocated, a portion of the lighting value should have been assigned to the street lighting service, as the plant also serves as an auxiliary or breakdown plant for every department. It is not without hesitation that we allow this auxiliary steam plant valuation in our valuations of property necessary for the performance of its public duties by the Railway and Light Company. In this section of the country, where in certain seasons there is a shortage of rainfall, we consider a steam plant, as essential to full and uninterrupted service, as an auxiliary to a hydro-electric plant. Under contracts for firm power or continuous primary current, the duty to provide and maintain the auxiliary is upon the seller of current, not upon the customer. When this burden is assumed by the latter, it is the rule, as well as right, that it should be compensated by the seller in the grant of a lower rate. The Macon Railway and Light Company contracted for continuous, fixed, primary current. It owns and maintains the auxiliary necessary to insure it against break-downs or stoppages of current and suspension of its public service. Having supplied this investment,

it should have compensation therefor from the Power Company, for whose benefit it is supplied and maintained. The Power Company, in a measure, has recognized this by agreeing to pay the expenses of operation, when it is called into service, and claims that the fact that the investment is supplied by the Railway and Light Company, has been recognized and compensated in the contract rate for current, approximately the equivalent of one cent per kilo-watt hour, measured in Macon after the voltage has been transformed to 2300 volts.

In our opinion, the contract rate is rather full and borders close to being unreasonably high. It is contended by the Railway and Light Company's representatives, and they are also the Power Company's representatives, that current cannot be generated by steam in Macon for less than one and a quarter cent per K. W. H. and that therefore the current is being obtained for less than it can be manufactured.

From our observation, and from data obtained from other sources, we are inclined to believe that one and a quarter cent per K. W. H. as the cost of manufacturing current by steam in Macon is full, but for present purposes we do not take issue with the estimate. The real question is what does it cost the Central Georgia Power Company to supply this current, under the conditions of its contract with the Railway and Light Company, and what selling figure would afford it, also a corporation serving the public, a fair return upon the fair value of its property. It is not our purpose to rule on this question, but in passing we content ourselves with the observation that this Commission, in prescribing reasonable and just rates for light and power supplied the Macon public by the Railway and Light Company, does not feel bound to accept the contract price paid for current by the Railway Company to the Power Company, as conclusive or binding on it. The public need not suffer because of the unreasonable cost of current

furnished to it by the Railway Company, whether this cost results from an unwise purchase contract, or extravagant, unwise and needless operating expense or plant investment in manufacturing.

In arriving at a conclusion as to what is a just and reasonable rate for the Railway and Light Company to charge its customers, the Commission has considered that the rate prescribed ought to be such as will pay the reasonable expenses of operation, taxes, depreciation or destruction of property in its daily use, and interest on the fair value of the property used, including the risks incident thereto. In this case the Commission is of the opinion that four and one-half per cent. per annum on the value of the entire property, is a fair annual allowance for depreciation. Taxes are fixed by law. In our opinion the income tax to be paid the city, for the first time in 1914, will be approximately set off by the deduction of the city's proportion of the franchise tax assessed under the Act of 1902, and the allowances for special taxes heretofore. The net increase in taxes to be assessed for 1914 because of the income tax to the city, will not be appreciable.

The Commission has made a careful study of the operating expenses of the company for the past four years, and is of the opinion that they are reasonable, and that the company has been economically operated. Of course the large increase in the percentage of operating expenses to the total revenue for 1913, is explained by the fact that the revenue for 1913, in the lighting department, owing to the loss of business from competition, was reduced about $100,000.00, with no possibility of a like cutting down of operating expenses. The operating expenses, in dollars, have increased over a few years back, because of increase in wages and in the prices of materials and supplies, and perhaps somewhat to conditions in the past year, now removed.

The Commission has had the petitioner furnish it with practically every detail of its lighting and power business

for each of the years 1912 and 1913, the first as representing normal conditions and the second, exceedingly active competitive conditions. We have required a complete segregation of the commercial and residence lighting, showing the number of customers in each rate class, and the K. W. H. consumption by each class. We have required exhibits of the results of the application of the existing scale of rates to each class of consumers, of the petitioned for scale of rates, and of two different scales proposed by the Commission, including the scale hereinafter adopted. These have each been carefully proven by the rate expert of the Commission.

From a study of the record in this case and our independent investigations, the Commission is of the opinion that at this time and under present conditions a just and reasonable scale of net rates for commercial and residence lighting and for power, to be charged by the Macon Railway and Light Company, is as follows:

LIGHTING RATES:

For the first	50	K. W. H.'s	9¢
For the next	50	"	7¢
"	100	"	6¢
"	300	"	5¢
"	500	"	4¢
"	4000	"	3¢
For all over	5000	"	2¢

POWER:

For the first	100	K. W. H.'s	5¢
For the next	400	"	3¢
"	500	"	2.5¢
"	1500	"	2¢
"	2500	"	1.75¢
For all over	5000	"	1.5¢

We know of no more accurate way in which to ascertain probable income under this scale than to apply it to the actual business of the company for the past year, and see what it would have done had it been in force during this period.

We have had this application made to the business actually done in November and January, and from the results calculated the increased percentage of revenue for these two months, and then applied the same percentage to the year's business.

The following calculations show the process and results:

INCOME AND EXPENSES MACON RAILWAY AND LIGHT COMPANY LIGHT AND POWER, 1913 AND 1914.

Actual Revenue.

	Revenue	Operating Expenses and Taxes
March, 1913	$ 10,877.53	$ 9,160.98
April, 1913	9,341.59	8,744.65
May, 1913	8,810.54	8,481.78
June, 1913	8,382.65	8,366.17
July, 1913	6,810.57	8,276.41
August, 1913	6,381.41	8,546.82
September, 1913	7,243.04	8,480.64
October, 1913	8,851.17	8,702.00
November, 1913	8,776.23	7,235.62
December, 1913	9,484.38	8,151.22
January, 1914	9,204.74	8,407.60
February, 1914 (estimated)	8,560.00	8,415.00
	$102,723.85	$100,968.89
Less street and municipal lighting	15,976.00	17,694.00
	$ 86,747.85	$ 83,274.89

COMPARISON BETWEEN APPLICATION OF 9c NET PROPOSED SCALE TO TWO MONTHS ACTUAL BUSINESS, WITH RECEIPTS UNDER EXISTING SCALE EXCLUDING STREET AND MUNICIPAL LIGHTING UNDER CONTRACT TO C. G. POWER CO.

November, 1913.

Gross actual light and power revenue under present scale	$ 8,776.23
Less revenue from street and municipal lighting	1,248.95
Commercial and residence lighting and retail power	$ 7,527.28
Gross light and power revenue, under proposed 9 ct. scale	$ 13,784.44
Less revenue from street and municipal lighting	1,248.95
Commercial and residence lighting and retail power under proposed 9 ct. scale, on actual business	$ 12,535.49
Actual revenue under present scale	7,527.28
Increase over actual receipts under present scale by application of proposed 9 ct. scale to November business	$ 5,008.21

Equivalent to 66.53 per cent. increase under proposed scale applied to actual November business over actual receipts from existing scale.

January, 1914.

Gross actual light and power revenue under present scale	$ 9,204.74
Less revenue from street and municipal lighting	1,302.48
Commercial and residence lighting and retail power	$ 7,902.26
Gross light and power revenue under proposed 9 ct. base, applied to January business	$ 14,526.17
Less street and municipal lighting	1,302.48

Commercial and residence lighting and retail power		$ 13,223.69
Actual revenue under present scale		7,902.26
Increase over actual revenue under present scale by application of proposed 9 ct. scale to January business		$ 5,321.43

Equivalent to 67.34 per cent. increase under proposed scale applied to actual January, 1914, business over actual receipts from existing scale; or

An average increase for the two months on the actual business of these months of 66.93 per cent.

The total income of the company under existing rates for the twelve months ending February 28th, 1914, based upon actual receipts for eleven months, and estimated receipts for February, exclusive of street and municipal lighting under contract to the Central Georgia Power Co., is		$ 86,747.85
This sum would have been increased had the proposed 9 ct. base scale been in effect, 66.93 per cent., aggregating		58,060.33
Making the total revenue from commercial and residence lighting and retail power, as thus increased		$144,808.18
Actual operating expenses and taxes as reported by the company, for 11 months ending January 31, 1914, for light and power		92,553.89
Estimated for February, 1914, average per month of preceding 11 months, which is high for February		8,415.00
Total operating expenses and taxes for 12 months ending February 28, 1914		$100,968.89
From which deduct expenses on account of street and municipal lighting		17,694.00

Leaving operating expenses and taxes chargeable to commercial and residence lighting and retail power for 12 months ending February 28, 1914		$ 83,274.89
Street and Municipal Light Expenses:		
Current for streets	$ 9,482.00	
Current for municipal buildings	368.00	
Taxes 15% of whole	1,865.00	
Maintenance	5,979.00	
Total	$17,694.00	
To operating expenses and taxes should be added depreciation, which in this case we are of the opinion, will be amply covered by 4½% annually on the present value of the entire physical property devoted to commercial and residence lighting and retail power, including land, to-wit, $439,241.00		$ 19,765.84
Making total operating expenses, taxes and annual depreciation		$103,040.73
As against an income of		144,808.18
Upon the actual business for the past 12 months under application of the proposed 9 ct. base scale; or		
A surplus of		$ 41,767.45

Which is 8.99 per cent. on our estimate of the fair value of the property, including working capital, devoted at this time to the public use in supplying commercial and residence lighting and retail power in Macon.

It should be borne in mind that these results are obtained from simple application of the proposed new rates to the actual business of the past twelve months, beyond any question the most unfavorable in the history of the company, the business that the railway held under the fiercest competition.

We believe there is an annual normal increase in this business in Macon, from natural growth, of ten to fifteen per cent. Competition, neither fierce nor mild, exists longer, and for the future when every prospect pleases, it does not seem forced to conclude that if under 1913 conditions and its unusual expenses on the business of that year, the proposed scale would have earned 9 per cent. on the value of the investment, an equal return will be had in 1914.

In adopting the above scale the Commission took into consideration that of the 2319 light consumers the company had in November, 1913, 408 consume less than 12 K. W. H. per month and 1421 consume between 12 and 50 K. W. H.'s per month, these two classes constituting approximately 80 per cent. of the total number of lighting customers on the company's books. The total K. W. H.'s of current sold for lighting, in November, to its 2319 customers were 173,284, of which approximately only 23 per cent. or 39,060 K. W. H.'s were used by 1829 customers in monthly quantities of 50 K. W. H.'s and less. Of the total light customers 1720 were residence light customers.

It must be clear to every one that it costs an electric light company more, per K. W. H., to serve one patron using 12 K. W. H.'s monthly, than it does one using 200 or 500 K. W. H.'s monthly. It costs the company just as much to keep the book account, read the meter, make out the bill, collect the account, etc., for the small customer as for the larger. The investment and maintenance in poles, transmission, meters, transformers, etc., for the small customer is more or less than that to serve the large customer, according to the distance from the central station. The smaller the units of delivery, that is as delivering stations are multiplied, the loss in current is multiplied. A company can serve one customer taking 2000 K. W. H.'s per month, profitably at a price per K. W. H. which would break or bankrupt it to deliver the same current to 200 customers, in quantities of 10 K. W. H.'s each per month. The expense

of rendering the service is not the only item; the distribution loss in current is far heavier, as small individual consumers are taken on. Of four and one-quarter million K. W. H.'s of light and power current bought of the Central Georgia Power Company by the Railway and Light Company, per annum, and paid for, the Railway and Light Company charges to its customers and gets pay from them for less than three and one-quarter million K. W. H.'s. The balance of the current bought and paid for by it, at its substation in Macon is lost in transmission to and distribution among its numerous patrons.

To be fair to the company, it is absolutely necessary, because of its investment and the expense in serving small customers, to allow a considerably higher rate on this class than is allowed for larger consumers.

This Commission has repeatedly required light companies, under their obligations to serve, to extend lines and install meters, at considerable expense, into virgin territory, for only two or three and even one customer. Residence lighting customers, generally, are farther located from the central plant or substation and not so closely located, as the stores, offices and manufacturing plants in the business section of a city, and hence often require larger individual investments in poles and wire, and require more of the time of repair gangs, meter readers, collectors, etc., in serving them.

The scale prescribed by the Commission is materially lower than that asked for by petitioner. Counsel for the city and citizens opposed to the grant of the application contrasted the net base rate asked for by the petition, 10 cents K. W. H. with the base rates in Atlanta and Jacksonville, to-wit, 7 cents. A comparison of the base rates alone, does not afford a fair index of the rates as a whole. The entire scale should be compared. In doing this there are local conditions which must be also considered. Atlanta is a much more densely populated city than Macon, and to

that extent it costs less to serve its people. The proportion of large consumers to small consumers is much larger in Atlanta than in Macon. The entire volume of business is many times as large. The Atlanta scale, which was not prescribed by this Commission, is relatively lower for small consumers than for the larger consumers. Jacksonville owns and operates a municipal plant. The money to build it was furnished by the public from public taxation and the investment is therefore that of the public. No returns on the investment to the owners, in the form of dividends, have to be earned; the owners, the public, can only secure such returns in the form of low rates. Of course, the municipal plant pays no taxes, either city, state or federal; the public therefore loses all tax income from this investment which if privately owned, it would secure. The loss of taxes and returns in the form of dividends, therefore should be reflected in the rates. Under the law, owners of a private plant devoted to public use, are entitled to and cannot be denied fair returns on the fair value of their property, and are also entitled to reflect in their rates, all governmental taxes, licenses, assessments and charges. It follows, therefore, as beyond question, that a municipal plant, without the burdens of earning returns for its owners and of tax contributions, not only can, but should give lower rates to its public owners.

We have had the rate expert prepare the following table showing the actual charges paid by different classes of light consumers under the rates in effect in Atlanta and in Jacksonville, and the charges which will be paid in Macon by the same classes, under application of the rates herein prescribed for that city:

COMPARISON OF ELECTRIC LIGHT BILLS FOR ELECTRIC LIGHTING PURPOSES IN JACKSONVILLE, ATLANTA AND MACON, GEORGIA.

Based on Proposed Scale for Macon.

K. W. H.'s Consumed	Atlanta	Jacksonville	Macon
10 K. W. H.	$ 1.00	50¢ to $2.00	$ 1.00
30	2.10	2.10	2.70
50	3.50	3.50	4.50
100	7.00	7.00	8.00
150	10.50	10.50	11.00
200	13.20	14.00	14.00
300	18.60	21.00	19.00
400	24.00	28.00	24.00
500	29.40	35.00	29.00
1000	56.40	63.00	49.00
2000	116.50	119.00	79.00
3000	152.50	157.50	109.00
4000	188.50	168.00	139.00
5000	224.50	210.00	169.00
10000	404.50	420.00	269.00
15000	584.50	630.00	369.00

All the above monthly charges based on consumption are net charges predicated upon prompt payment of bills.

It will be noted that the Commission has prescribed a minimum charge of $1.00 per meter per month. In our opinion this is a reasonable and just charge. The company is required to serve the public at any hour of the twenty-four the customer calls upon it; to do this, it must invest large sums in its plant and equipment, and hold it in absolute readiness to serve whenever called upon: it must keep its plant, lines and equipment in order; it must preserve its organization; it must keep employed officers and employees by the year; its accounts must be kept; meters read monthly and the same expense incurred in these and similar items,

whether the consumption be two or one thousand K. W. H.'s per customer. The $1.00 minimum charge is prescribed to compensate the company in a measure for its constant readiness to serve and the reasonable going expenses of keeping in such a state of readiness.

The scale of prices for light and power which we have prescribed are to be made effective on and after March 1st, next.

Special Contract Rates.

All special rates, whether in the form of contracts for definite periods, or informal, in excess of these prescribed rates are illegal. The rates prescribed are maximum rates and cannot be exceeded. Should the Railway and Light Company have outstanding contracts, verbal or written, which are at less than the rates prescribed, they must be abrogated as unlawfully discriminatory, and made to correspond with the Commission's scale, or the same special rates given to all of the public.

The Commission has given careful consideration to the contentions of counsel for firms and individuals holding term contracts made at the rates now in effect, that they should stand and be carried out by the company. To allow them to stand and to require others of the public to pay higher rates would be rank discrimination; such a condition cannot be allowed to exist. One of the chief objects of the creation of this Commission, was that it should at all times prevent unlawful discriminations, and compel equality of service and charge to all under like circumstances and conditions. Unlawful discriminations arising out of different rates can only be removed by moving the lower rate up to the higher, or the higher to the lower.

The rates prescribed herein are in the opinion of the Commission, at this time, just and reasonable. We have no power to compel the company to accept less, except as im-

plied in the power to prevent unlawful discrimination. The courts have repeatedly ruled upon the principles involved in this question, and our own Supreme Court has several times held that the regulatory power of the Commission cannot be set aside by contracts of this character. Its latest deliverance on this question was in the railroad mileage case (80 S. E. Rep. p. 332) in which it said:

"'In the cases last cited the Supreme Court of the United States held that contracts already made (in the one case as to rates, in the other as to free transportation) must yield to lawful regulation as to interstate commerce.''

"In the Armour case (209 U.S. 82) Mr. Justice Day said:

'If the shipper sees fit to make a contract covering a definite period for a rate in force at the time, he must be taken to have done so, subject to the possible change of the published rate in the manner fixed by statute, to which he must conform or suffer the penalty fixed by law.'"

In *Kentucky and Indiana Bridge Company* v. *L. & N. R. R. Co.* (12 I.C.C. Rep. 162), Judge Cooley said:

"If the Legislature had no power to alter its police laws when contracts would be affected, then the most important and valuable reforms might be precluded by the simple device of entering into contracts for the purpose. No doctrine to that effect would be even plausible, much less sound and tenable."

We do not deem it necessary to multiply citations on this question. These contracts for rates lower than those prescribed in this case must be abrogated, or the public generally put upon the same basis, on and after March 1st, next.

Conclusions.

We believe in the foregoing that we have substantially covered the material issues raised in this record. Because of the peculiar conditions heretofore existing in Macon, of the wide-spread interest in the existing light rate situation and of the fact that so many citizens have a direct pecuniary

interest in the subject, we have felt it advisable to go into the discussion at the length and in the elementary way that we have. Such discussion and explanation of our views is due the public and the petitioner.

The rates prescribed are subject, of course, to future investigation and review by the Commission. It is our purpose to require monthly reports, for the next twelve months, from each company, showing the actual results of their business and on their returns, of the application of the prescribed rates. At the expiration of this period should these results satisfy us that there ought to be further decreases, or increases, the Commission will act accordingly. It has been the purpose and desire of the Commission to deal fairly with the company, as well as with the public.

This Commission feels deeply the burden of responsibility on it in rate cases, and is fully conscious of the possibilities of disastrous results to public service corporations and the public alike, should it, carelessly or innocently, prescribe unjust and unreasonably low rates. There is need, as there are opportunities, for great industrial developments in Georgia. To fully meet this need and improve these opportunities, capital other than our own must be attracted. There is no surer way of doing this, than at all times treating it and its owners fairly.

There are risks and hazards in public utility investments, not always carried by private enterprises. There should be recognition of this in prescribing rates; they should allow some compensation therefor. Investors in public utility enterprises unquestionably surrender or rather have to yield to governmental agencies in the regulation and control of their rates and services. They are not free to do as they will with their property, nor get what they can out of it. They are subject to the will of the people whom they serve, and having such powers, it seems to us, that there should be recognition at all times of corresponding obligations for at least fair treatment.

The rates which we have prescribed, will, we believe, earn fair returns, under wise and economical management, upon the fair values of the properties devoted to the public use. We believe the services to the public are reasonably worth the prices we have fixed. If at the expiration of one year under their operation, we find we are mistaken, we shall promptly undertake to revise them.

GEORGIA, FULTON COUNTY.

I, A. O. RANDALL, Secretary of the Georgia Public Service Commission, do hereby certify that I am the duly appointed officer of said Commission in charge of the records of the Commission, and authorized by law to certify copies thereof, and do hereby certify that the attached photostatic sheets designated as "Electric Rates, pages 259 through 281" are true and correct copies of the originals thereof as taken from the 41st Annual Report of the Railroad Commission of Georgia for the year 1913, which is of record with the Commission.

I further certify that the official title of the Railroad Commission of Georgia has been changed by statute to the Georgia Public Service Commission.

GIVEN UNDER MY HAND AND THE OFFICIAL SEAL OF THE GEORGIA PUBLIC SERVICE COMMISSION, this the 12th day of July, 1955.

/s/ A. O. RANDALL
A. O. RANDALL, *Secretary*